

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Service Rules for the Advanced Wireless)	
Services H Block—Implementing Section)	WT Docket No. 12-357
6401 of the Middle Class Tax Relief and Job)	
Creation Act of 2012 Related to the 1915-)	
1920 MHz and 1995-2000 MHz Bands)	

COMMENTS OF CELLULAR SOUTH, INC.

Cellular South, Inc. (d/b/a C Spire Wireless) (“C Spire”) submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) issued in the above-captioned proceeding.¹

INTRODUCTION

With this NPRM, the Commission proposes to fulfill its Congressional mandate to allocate ten megahertz of paired spectrum (1915-1920 MHz and 1995-2000 MHz (the “H Block”)). In allocating the H Block, the Commission should adhere closely to Congress’ recently reaffirmed principle: spectrum auctions are to be designed and implemented in a manner that promotes economic growth and competition in the wireless industry while avoiding the

¹ *Service Rules for the Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands*, Notice of Proposed Rulemaking, Docket No. 12-357 (rel. Dec. 17, 2012) (“NPRM”).

harms caused by the concentration of spectrum licenses in the hands of too few licensees.² Today's wireless industry is heavily consolidated. And so, now, perhaps more than ever before, it is critical for the Commission to emphasize competition and reduced consolidation in its auction designs.

With the auction of the H Block spectrum, the Commission has the opportunity to address further wireless industry consolidation while generating new opportunities for competitive operators and new entrants to spur greater innovation and access to wireless services. As C Spire has recently noted in the Incentive Auction proceeding, the Commission can ensure valuable low band spectrum reinvigorates wireless competition and generates entirely new economic opportunities for many American consumers and communities through the adoption of several basic auction structures and simple service rules like clear auction eligibility requirements and band plans, small geographic license areas, and aggressive build-out requirements.

DISCUSSION

I. THE 2012 SPECTRUM ACT³ PROVIDES A BLUEPRINT FOR H BLOCK RULES

The Commission can and should quickly move forward with an allocation of the H Block spectrum through a well-designed auction process that encourages competition and widespread deployment of mobile broadband services.

² See 47 U.S.C. § 309(j)(3)(B); Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6401, 126 Stat. 156 (2012).

³ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6401, 126 Stat. 156 (2012) ("2012 Spectrum Act").

A. The H Block Is Ripe for Allocation to Commercial Use

The Commission is correct to conclude that it need not take any further steps in order to allocate the H Block spectrum for commercial use. In the 2012 Spectrum Act, Congress has required the Commission to allocate the H Block for commercial use.⁴ Because the Commission has already designated the H Block for non-federal fixed and mobile use on a primary basis, the Congressional requirements set forth in the 2012 Spectrum Act are satisfied and the Commission can proceed with its H Block allocation.

B. H Block Licenses Should Be Allocated via Competitive Bidding

Section 6401(b) of the Spectrum Act requires the Commission to assign H Block licenses via competitive bidding pursuant to 309(j) of the Communications Act.⁵ With this provision, Congress has reaffirmed its position that, in designing and conducting spectrum auctions, the Commission must promote economic growth and competition in the wireless industry while avoiding the harms caused by the concentration of spectrum licenses in the hands of too few licensees.⁶ The Commission should, therefore, remain committed to its position that, when paired with objective, generally applicable eligibility requirements, the “competitive bidding mechanism is most likely to select licensees that value the spectrum the most and will put it to its highest and most efficient use.”⁷ Properly structured competitive bidding can produce healthy

⁴ Id.

⁵ Id.

⁶ 47 U.S.C. § 309(j)(3)(B) (emphasis added).

⁷ Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands, WT Docket No. 12-70, *Report and Order and Order of Proposed Modification*, FCC 12-151 ¶ 209 (rel. Dec. 17, 2012) (“*AWS-4 Order*”); *see also* Amendment of Parts 1 and 22 of the Commission’s Rules With Regard to the Cellular Service, Including Changes in Licensing of Unserved Area, WT Docket No. 12-40,

competition by enabling smaller operators to expand and new entrants to introduce services that can temper the overwhelming consolidation of the current wireless market.⁸ The Commission should aim to maximize these benefits through competitive bidding of H Block licenses.

II. THE COMMISSION SHOULD ADOPT ITS BLOCK CONFIGURATION AND SERVICE AREA PROPOSALS

The Commission proposes to license the H Block spectrum in paired 5 MHz blocks.⁹

This proposal should be adopted because it allows for efficient deployments of the latest mobile wireless service technology and maximizes the potential number of licensed blocks available for mobile broadband services in a given area.

A. The Commission Should License the H Block in Paired 5 MHz Blocks

By pairing the H Block spectrum (with 5 MHz of uplink at 1915-1920 MHz and 5 MHz of downlink at 1995-2000 MHz) the Commission will promote efficient use of this spectrum and facilitate speedy deployment of mobile broadband services. Such a configuration will allow current operators to more easily augment their existing PCS operations with H Block spectrum. Similarly, 5 MHz blocks of paired spectrum should provide new entrants with the ability to deploy current and future wireless technology and offer innovative services across a given license area.

More specifically, by pairing the H Block spectrum in 5 MHz blocks the Commission could quickly enable expanded deployment of advanced mobile broadband services. For

Notice of Proposed Rulemaking and Order, FCC 12-20 ¶ 22 (rel. Feb. 15, 2013) “[C]ompetitive bidding places licenses in the hands of those that value the spectrum most highly.”)

⁸ As of 2010, per the Herfindahl-Hirschman Index (“HHI”), wireless industry consolidation measured 2,848—nearly 350 points *above* the HHI’s threshold of a “highly concentrated” market. *See* 15th Wireless Competition Report, ¶ 2.

⁹ NPRM ¶ 22.

example, today's LTE technology could be deployed on a 5x5 MHz basis or, where an operator has an additional 10 MHz of paired PCS spectrum available, on a 10x10 MHz basis. Accordingly, the H Block should be allocated, as proposed, in paired 5 MHz blocks with the uplink at 1915-1920 MHz and the downlink at 1995-2000 MHz.¹⁰

B. The Commission Should License the H Block in Areas no Larger Than Economic Areas (EAs)

The H Block should be licensed in geographic areas no larger than the proposed Economic Areas (EAs).¹¹ The Commission should avoid repeating the mistake made with the 700 MHz Upper C block licenses, when large geographic license areas were used to facilitate an effortless path to a nationwide license. There, because of the large geographic size of the licenses, very few Auction 73 participants bid for the Upper C Block licenses and, ultimately, auction revenue for that spectrum was extraordinarily low. By contrast, the smallest geographic license areas in Auction 73 – the 700 MHz Lower B Block, which was divided into 734 CMAs – brought the highest price per MHz/POP of any block of spectrum.¹² The clear lesson to be learned from the 700 MHz Upper C Block experiment is that competitive operators, Designated Entities, and virtually all other new entrants cannot realistically participate in the bidding for the largest geographic license areas. This effectively awards those licenses to the Bell incumbents for the reserve price, which shortchanges the United States Treasury and further concentrates valuable spectrum in the hands of the largest operators.

In order to balance the competing desires to maximize revenue and allow for efficient geographic aggregation of licenses, C Spire urges the Commission to auction the H Block

¹⁰ NPRM ¶ 25.

¹¹ NPRM ¶ 29.

¹² See, Auction 73 summary data of *Wireless Strategy* (<http://www.wirelessstrategy.com/auction8.html>)

licenses in geographic blocks corresponding to Economic Areas (EAs) as proposed in the NPRM.¹³

III. THE COMMISSION SHOULD ADOPT AN EQUITABLE AND PREDICTABLE COST-SHARING MECHANISM

The Commission proposes to require H Block licensees to pay a *pro rata* share of the reimbursements owed to UTAM, Inc. (“UTAM”) and Sprint Nextel Corporation (“Sprint”) based on the gross winning bids of the initial auction (and within 30 days of the grant of each licensee’s long-form license application).¹ C Spire supports the Commission’s goal. H Block licensees should reimburse UTAM and Sprint on a *pro rata* basis for the full costs those parties incurred in relocating incumbent microwave users between 1915-1920 MHz and BAS licensees between 1995-2000 MHz, respectively. C Spire also agrees that the Commission should adopt a formula that maximizes (1) bidders’ ability to predict, with certainty, the value of any additional cost recovery amounts that would accompany each license and (2) the ability of UTAM and Sprint to be reimbursed in a timely manner after the close of the auction.

However, because the proposed formulas are tied directly to the gross winning bid for each licensed area, it will be impossible for bidders to accurately predict before the auction closes the value of the cost-recovery amount for each license. Bidders and potential bidders could more readily calculate cost-recovery amounts before and during the auction if the Commission used a formula based upon a known value, such as the population of each license area (EA), and C Spire encourages the Commission to consider the benefits such an approach might provide.

¹³ NPRM ¶ 29.

IV. THE COMMISSION SHOULD ADOPT LICENSING RULES THAT PROMOTE COMPETITION AND WIDESPREAD ACCESS

As the Commission recognized in the NPRM, spectrum holdings policies for both auctions and transactions are under review in another pending proceeding.¹⁴ Congress, however, has already made clear its view on the matter. In an effort to allow market forces, rather than substantial Commission intervention, to foster innovation and regulate pricing in the wireless industry, Congress required the Commission to design spectrum auctions that promote wireless industry competition and widespread access to mobile broadband services. The Commission is to conduct spectrum auctions in a manner that will “promot[e] economic opportunity *and competition*...by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants....”¹⁵

A. The Commission Should Pursue Eligibility and Spectrum Holding Policies that Promote Competition and Reduce Spectrum Concentration and Market Consolidation

With Section 6404 of the 2012 Spectrum Act,¹⁶ Congress reaffirmed the Commission’s authority to implement objective qualification and eligibility criteria regarding all potential bidders in the broadcast incentive auction. Section 6404 provides that the Commission’s existing authority “to adopt and enforce rules of general applicability, including rules concerning spectrum aggregation that promote competition” shall remain unimpeded.¹⁷ Congress’s rationale for this provision is straightforward: “Maintaining the FCC’s current range of tools for

¹⁴ NPRM ¶ 76 (*citing* Policies Regarding Spectrum Holdings, WT Docket No. 12-269, *Notice of Proposed Rulemaking*, FCC 12-119 (rel. Sept. 28, 2012)).

¹⁵ 47 U.S.C. § 309(j)(3)(B) (emphasis added).

¹⁶ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6404, 126 Stat. 156 (2012).

¹⁷ *Id.*

structuring a spectrum auction . . . provides the agency with the requisite flexibility to attract a significant number of bidders to ensure competitive bidding necessary to maximize auction revenues and that the market for spectrum remains competitive for companies of all sizes.”¹⁸

As it has done before,¹⁹ the Commission can and should establish objective qualifications of general applicability that will ensure the broadcast incentive auction is both fair and promotes competition. In particular, and as C Spire detailed in its Incentive Auction NPRM Comments, the Commission can and should adopt (1) auction eligibility requirements, (2) band plans, (3) small geographic license areas, and (4) build-out requirements that foster competition.²⁰

Together, the 1996 Communications Act²¹ and the 2012 Spectrum Act provide the Commission with the Congressional authority and specific direction to “adopt and enforce rules of general applicability...concerning spectrum aggregation that promote competition.”²² One way that the Commission can fulfill this obligation is through careful and considered eligibility requirements for its spectrum auctions.

For example, the Commission should weigh carefully the existing spectrum holdings – particularly low band spectrum holdings – of all potential auction participants. Over the past

¹⁸ Letter from Senators Kerry, Snowe, Warner, and Moran to Majority Leader Reid and Minority Leader McConnell (January 9, 2012).

¹⁹ See, e.g., *Revision of Rules and Policies for Direct Broadcast Satellite Service*, IB Docket No. 95-168, Order, 11 FCC Rcd 9712, 9731, ¶¶ 49, 61–66 (1995) (one-time rule prohibiting incumbent licensees from bidding on new DBS licenses to promote entry); *Service Rules for the 746–764 and 776–794 MHz Bands and Revisions to Part 27 of the Commission’s Rules*, Second Report and Order, 15 FCC Rcd 5299, 5326, ¶¶ 62–63 (2000) (rules for 700 MHz guard band prohibiting one licensee from obtaining both licenses in a market); see also PCS (A- through F-Block) and LMDS auction eligibility restrictions and DE opportunities.

²⁰ Comments of Cellular South, Inc. (d/b/a C Spire Wireless), Docket No. 12-269 at 4-9 (filed Jan. 25, 2013) (“CS Incentive Auction Comments”).

²¹ 47 U.S.C. § 309(j)(3)(B)

²² Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6404, 126 Stat. 156 (2012).

several years, low band spectrum has become further concentrated in the hands of the largest operators.²³ This has forced competitors and new entrants to undertake more costly network deployments utilizing higher band spectrum – generally, spectrum above 1 GHz – which has less robust propagation characteristics.

The Commission should adopt a spectrum screen that accounts for the aggregation of spectrum, particularly low band spectrum, by the largest operators. That screen should be applied to the H Block spectrum at issue in this proceeding. The Commission should then provide a set of upfront and predictable rules regarding each bidder's eligibility in the H Block auction, based on the screen.

B. Ten-Year Terms and Aggressive Build-Out Requirements for H Block Licenses Will Encourage Wide Spread and Speedy Deployments.

The Commission's proposes a ten-year term for H Block licenses.²⁴ This is appropriate because it would provide consistency with other spectrum blocks and afford each licensee more than enough time needed to design, acquire the necessary equipment and devices, and deploy facilities across nearly all of their licensed area.

However, to effectively prevent spectrum aggregation and warehousing while encouraging quick, widespread deployment of services across the H Block spectrum, the Commission must also utilize aggressive build-out requirements.

The NPRM proposes to measure build-out requirements according to the percentage of the population served within the license area.²⁵ This approach, however, fails to assure that less densely populated communities – especially those that may fall within a license area that

²³ See, Notice of Ex Parte Presentation by Free Press: WT Docket Nos. 11-18, 11-65, DA 11-252 (April 27, 2011); Congressional Research Service Report No. R41813, p. 14 (July 7, 2011).

²⁴ NPRM ¶ 78.

²⁵ NPRM ¶ 81.

contains a densely populated urban center – will have timely access to the most advanced mobile broadband services. This concern increases as the size of the geographic license area increases.

Given its support for Economic Area licenses, C Spire believes the Commission should utilize geographic build-out requirements similar to those required of Lower 700 MHz A and B Block licensees (e.g., offering service to 35% of each geographic license area after 4 years and 70% of each geographic license area after 10 years).²⁶ Geographic build-out requirements such as these are far more likely to ensure that H Block licensees move quickly to deploy next generation wireless services – especially to consumers in America’s vast non-urban areas.²⁷

CONCLUSION

The auction of the H Block spectrum for mobile broadband services is an important opportunity for economic growth and improved access for American wireless consumers. But, this opportunity is not without the significant risks evidenced by the results of other recent auctions. In the context of today’s highly consolidated wireless industry, it is critical that the Commission adopt auction structures and service rules that will promote competition, rather than further consolidation.

Respectfully submitted,

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²⁶ In Auction 73, the Commission licensed the Lower 700 MHz A Block according to Economic Areas and licensed the Lower 700 MHz B Block according to Cellular Market Areas.

²⁷ However, the Commission’s enforcement of geographic build-out requirements must take into account the possibility of extraordinary circumstances which result in the lack of a viable ecosystem for H Block spectrum.